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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,252	12/19/2001	Livio Buongiorno	D-30213-01	7924

7590 09/10/2003
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7
EXAMINER

NOLAN, SANDRA M

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 09/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application N .	Applicant(s)	
	10/026,252	BUONGIORNO, LIVIO	
	Examiner	Art Unit	
	Sandra M. Nolan	1772	

-- **Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --**
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 10-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims

1. Claims 1-15 are pending.

Election/Restrictions

2. Applicant's election of Group I, claims 1-9 and 15, in Paper No. 6 (the response dated 30 June 2003) is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
3. This application contains claims 10-14 drawn to an invention nonelected with traverse in Paper No. 6. A complete reply to any final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
6. Claims 1-9 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perazzo et al (US 5,043,205) in view of Foster et al (US 4,535,113).

Perazzo teaches ostomy pouches (col. 1, line 17), made from laminated films having an outer layer of ethylene/butylene acrylate copolymer, another outer layer of vinyl acetate and acrylate ester copolymer material (col. 2, lines 57-64) and an inner barrier layer of vinylidene chloride copolymer, which copolymer contains acrylic ester, acrylic acid or vinyl chloride as a comonomer (claim 2 of the patent).

Ostomy pouches are deemed to satisfy claim 15.

Perazzo fails to teach polydimethylsiloxane polymers.

Foster teaches the use of 0.01 to 5% polydimethylsiloxanes (col. 4, lines 10-11; examples at cols. 5-7) in combination with blends of ethylene/vinyl acetate and ethylene/methyl acrylate copolymers (col. 3, lines 17-27.) Foster's combinations, when extruded as films, have superior mechanical and optical properties (abstract).

Perazzo and Foster are analogous because they both deal with films based on ethylene copolymers.

It would have been obvious to one having ordinary skill in the art at the time that the invention was made to employ the siloxane/blended copolymer combinations of Foster as the vinyl acetate and acrylate ester copolymer material in one of the outer layers of the laminates of Perazzo and to make ostomy pouches therefrom in order to make ostomy pouches with Foster's improved mechanical and optical properties.

The motivation to use Foster's blends in Perazzo's laminates is found in Foster's abstract, where improved mechanical and optical properties are taught for extruded films containing its blends.

It is deemed desirable to make ostomy pouches that have superior mechanical and optical properties in order to render them stronger and easier to use.

In the absence of convincing objective evidence to the contrary, it would require only routine optimization to determine the amount of ethylene/vinyl acetate copolymer needed to produce the best combination of properties for use in ostomy pouches.

Citation as of Interest

7. Davidson et al (US 5,091,453) teaches 0.5 to 100 parts polydimethylsiloxanes with blends of ethylene/vinyl acetate and ethylene/acrylate copolymers.

Conclusion

Any inquiry concerning this communication should be directed to Sandra M. Nolan, whose telephone number is 703/308-9545. The Examiner can normally be reached on Monday through Thursday, from 6:30 am to 4:00 pm, Eastern Time.

If attempts to reach the Examiner by telephone are unsuccessful, her supervisor, Harold Pyon, can be reached at 703/308-4251. The general fax number for the art unit is 703/305-9306. The receptionist answers 703/308-0661.



S. M. Nolan
Patent Examiner
Technology Center 1700